UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/113,128	04/30/2008	Joshua D. Larsen	110384.64001	1434

66880 7590 12/09/2016		EXAMINER	
Seed IP Law Group LLP/Scientific Games		WEATHERFORD, SYVILA	
701 FIFTH AVENUE			
SUITE 5400		ART UNIT	PAPER NUMBER
SEATTLE, WA 98104		3717	

NOTIFICATION DATE	DELIVERY MODE
12/09/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Marv.Hein@scientificgames.com
patentinfo@seedip.com
Jacques@seedip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSHUA D. LARSEN, CHRISTOPHER D. BARTON,
NATHAN K. HARVEY, and METTU R. REDDY

Appeal 2015-001455
Application 12/113,128
Technology Center 3700

Before BENJAMIN D. M.WOOD, WILLIAM A. CAPP, and
AMANDA F. WIEKER, *Administrative Patent Judges.*

CAPP, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the final

rejection of claims 1–20 as unpatentable under 35 U.S.C. § 103(a) over Lee

(US 2006/0160622 A1, pub. July 20, 2006) and Choi (US 2007/0094694 A1,

pub. Apr. 26, 2007).[1,2] We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

[1] The Examiner also provisionally rejected claims 1–10 on the ground of
non-statutory obviousness-type double patenting over claims 1–10 of co-
pending Application No. 12/113,134. Non-Final Action 2–3. We do not
reach this rejection. *See Ex parte Moncla*, 95 U.S.P.Q.2d 1884 (BPAI 2010)
(precedential).

[2] This appeal is related to Appeal No. 2015-001475, which is an appeal of
Non-Provisional Application No. 12/113,134.

THE INVENTION

Appellants' invention relates to gaming machines. Spec. ¶ 1.

Claim 1, reproduced below with disputed claim language highlighted, is

illustrative of the subject matter on appeal.

> 1. A method for downloading gaming related data from a
> server to a gaming machine, the method comprising:
>
> enabling download of gaming related data to a gaming
> machine in a background operation while a gaming application
> on the gaming machine is available for use;
>
> enabling variation in configurable download speed of the
> gaming related data in response to game events when
> downloading in the background operation, wherein there are
> more than one configurable download speeds, wherein a fastest
> configurable download speed is employed when a gaming
> machine is idle, and *wherein a slowest configurable download*
> *speed is employed, in anticipation of game play commencing,*
> *when there is a money transaction inputting money into the*
> *gaming machine*;
>
> identifying game events that are used to determine
> configurable download speed;
>
> establishing the configurable download speed based on the
> identified game events; and
>
> downloading gaming related data to a gaming machine in a
> background operation while a gaming application on the
> gaming machine is available for use at the established
> configurable download speed.

OPINION

Appellants argue claims 1–20 as a group.[3] Appeal Br. 4–7. We select

claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

The Examiner finds that Lee discloses all of the elements of claim 1

except for the limitations directed to varying the download speed in response

---

[3] Claim 21 is withdrawn. Appeal Br. 3.

to game events when downloading in the background operation. Non-Final
Action 5. The Examiner relies on Choi as disclosing dynamic control of
download speed. *Id.* at 5–6. According to the Examiner:

> Teachings of Choi also suggest that Lee can identify certain
> events as requiring more resources that others and therefore Lee
> can set a download speed once its monitor see[s] that event start
> (or anticipate gaming machine needs). Such changes to Lee
> would make the download operation transparent to the user of
> the gaming machine.

Id. at 6.

Appellants traverse the Examiner's rejection by arguing that the prior
art does not teach or suggest slowing the download speed when there is
money in the gaming machine. Appeal Br. 5. Appellants characterize the
act of depositing money in the gaming machine as triggering an anticipation
that system resource usage will increase imminently. *Id.* According to
Appellants, their claimed system is "not surprised" by a rapid increase in
system resource usage. *Id.*

Appellants attempt to distinguish Choi by arguing that Choi
dynamically sets download speed based on what type of application is
currently operating, not what type of application is going to be operating in
the future. *Id.* at 6–7. According to Appellants, "Choi in particular is
limited to what can be done during game play, not in anticipation thereof."
Id. at 7.

In response, the Examiner states that Choi determines the download
speed according to the type of application operating on a device and altering
the download speed accordingly. Ans. 5. The Examiner observes that one
of the applications that may be used to determine the download speed is
playing a game. *Id.* (citing Choi ¶¶ 8, 49). The Examiner states that Choi is

a secondary reference that is used to modify Lee, which teaches coin operated gaming devices. *Id.* The Examiner reasons and further states that it is well-known that insertion of money into a coin-operated gaming device starts the play of a game on that gaming device. *Id.* Therefore, according to the Examiner, insertion of money into the gaming device can indicate the start of playing a game such that insertion of money can be used as the type of application determining the download speed. *Id.*

The Examiner further responds to Appellants' argument that Choi only monitors current applications and, therefore, does not anticipate what type of application is going to be operating in the future. *Id.* at 6. The Examiner states that Appellants' position is predicated on the assumption that insertion of money into a gaming device is an act that is separate and apart from playing a game on the gaming device. *Id.* The Examiner takes the position that, in view of Choi, insertion of money can be set in advance as the indication of the type of application that will be used to alter the download speed. *Id.*

In reply, Appellants challenge the Examiner's statement that it is well-known that insertion of money into coin operated gaming devices starts the play of a game. Reply Br. 2. According to Appellants, gaming machines do not begin to operate upon insertion of money, rather, they begin upon pressing a button, such as "spin" or "deal," after a wager has been made. *Id.* Appellants argue that making a wager is a separate event from inserting money into a machine. *Id.* at 3. Appellants argue a gaming machine accounts for money that is input into the gaming machine, for example, by crediting a credit meter, but asserts that "the gaming machine remains idle until a game has been activated and is in operation or running."

Id. at 2–3. Appellants reiterate the argument from their Appeal Brief that Choi determines download speed according to the application that is currently running, which Appellants distinguish from varying download speed "in anticipation of game play commencing when there is a money transaction inputting money into the gaming machine," as recited in claim 1. *Id.* at 3.

Lee discloses a gaming system that includes a coin/credit detector 340 that monitors receipt of payment for game play through coins, bills, cash-value cards, or credit cards. Lee ¶¶ 44, 45. Lee discloses that software can be downloaded to a gaming device 430 in a background operation while an application, such as a gaming application, runs in the foreground on the gaming device. *Id.* ¶¶ 47, 57.

Choi discloses a method of controlling the download speed of a broadcast receiving device. Choi, Abstract. In the embodiment disclosed in Figure 6, at steps S220 and S230, download is performed at a controlled download speed. *Id.* ¶ 68, Fig. 6.

> the download speed is dynamically increased or decreased according to the processing resources consumed in operating the application. As described above, the download speed is decreased or set as "0" (i.e. stopped downloading data) as the processing resources consumption of the broadcast receiving device **100** increases. If the processing-resource consumption of the broadcast receiving device **100** decreases, the download speed may be increased. At this time, the stopped download may be restarted.

Id. ¶ 70. Choi further explains that information on the type of application that triggers a certain download speed may be set in advance and the system may decrease the download speed if the set application is operated.

> As another exemplary embodiment for controlling the
> download speed, when the monitoring module **220** monitors
> what type of application is operating, the control module **230**
> may lower the download speed to less than a certain level or
> stop the download if a predetermined type of application is
> operating. A number of processing resources are needed to
> play a moving picture or a game, so the download speed may be
> set as "0" when the application for playing a moving picture or
> a game is operating. *Information on the type of application*
> *may be set in advance, thereby decreasing the download speed*
> *if the set application is operated.* The information may be
> stored in the storage module **240**.

Id. ¶ 58 (emphasis added).

The Examiner's proposed combination of Lee and Choi discloses a gaming device that receives money and then dynamically sets a download speed for downloading that occurs in the background while gaming takes place in the foreground. *See* Lee ¶¶ 44, 45, 47, 57; Choi ¶¶ 68, 70. As taught by Choi, information on the type of application that triggers a reduced download speed may be "set in advance," thereby anticipating future system resource usage. Choi ¶ 58; Non-Final Action 6. In such a combination, the input of money, as taught by Lee, may be identified as the type of application that triggers a reduced download speed, as taught by Choi.

Appellants' point that Choi slows the download speed in response to an application that is currently running instead of anticipating a future event is well-taken. Moreover, we do not necessarily agree with the Examiner that inputting money "starts" the game, as such a construction reads "*in anticipation of game play commencing*" out of the claim. That does not mean, however, that the Examiner erred in rejecting the claim. The Examiner's rejection reasons that the teachings of Choi suggest that Lee can identify certain events as requiring more resources and, therefore, can set a

download speed upon the start of an event or in anticipation of the start of an event. Non-Final Action 6.

Choi varies download speed based on the occurrence of an event, which may be identified in advance. Choi ¶ 58. Assuming, for sake of argument, that there is distinction between putting money into a machine and starting a game on the machine as two separate and identifiable "events," Appellants do not explain or provide evidence as to why the selection of one event (money input) opposed to the other (game commencement) rises to the level of patentable invention.

> When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under § 103.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 421 (2007).

In the instant case, the sole aspect of Appellants' invention that is relied on for patentability over Lee and Choi is slowing the download speed upon the event of putting money into the gaming machine. We are not persuaded that such rises to the level of a patentable invention. The input of money is one of only a finite number of identifiable events that occur between a gaming machine being idle and the commencement of game play and an accompanying increase in system resource usage. Moreover, it is reasonably foreseeable that commencement of game play is likely to follow soon after putting money into the machine. In our opinion, merely triggering the slowing of download speed upon the event of putting money

into the gaming machine is the product not of invention, but of ordinary skill and common sense. *Id.*

In view of the foregoing discussion, we determine the Examiner's findings of fact are supported by a preponderance of the evidence and that the Examiner's legal conclusion of unpatentability is well-founded. Accordingly, we sustain the Examiner's unpatentability rejection of claims 1–20.

DECISION

The decision of the Examiner to reject claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED